

The Coalition does not believe that the FISR must be preserved in perpetuity. Future changes in the television marketplace may well warrant relaxation of the Rule, and, ultimately, its repeal. That day, however, has not arrived. While the Coalition therefore supports Commission review of the Rule, undertaking a review of the FISR every two years has simply resulted in higher costs for the industry, both in terms of business uncertainty and transaction costs, as parties attempt to adapt to a rapidly changing regulatory landscape. Moreover, marketplace changes of the magnitude that would render the FISR unnecessary are unlikely to occur in a two-year period. Consequently, the Coalition urges the Commission to commit to review the Rule again in 1999.

There is nothing to be lost, but much to be gained, from permitting the Commission this additional time to review the consequences of its deregulatory actions. On the one hand, a number of the trends discussed above -- *e.g.*, the increase in in-house production, the reduction in production by small producers -- are continuing ones. It is impossible to determine, at this early stage, when the marketplace will reach some new equilibrium, or what that equilibrium will look like. In addition, once the marketplace has fully adjusted to the new regulatory regime, it will take some time to measure and evaluate the public interest consequences of the changes that have taken place.

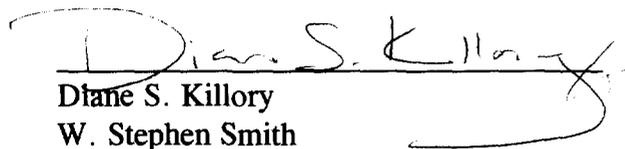
On the other hand, under a strengthened FISR, the networks will continue to be able to acquire financial interests in programs, subject to the separate negotiation safeguard. This will permit the marketplace to realize any efficiencies associated with network participation in program financing. The potential costs of preserving the

syndication rule until 1999, as noted above, are negligible (at worst). Finally, if the networks believe that a major development in the industry warrants revision of FISR before 1999, they are free, of course, to petition the Commission for accelerated review.

CONCLUSION

For these reasons, the Coalition urges the Commission to strengthen the FISR in the manner described above -- including taking immediate action to prevent the sunset of the remaining restrictions, as well as providing the other relief requested.

Respectfully submitted,



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Financial Interest and Syndication
Rule

May 30, 1995

APPENDIX A

COALITION TO PRESERVE THE FINANCIAL INTEREST AND SYNDICATION RULE

INDUSTRY ORGANIZATIONS

Alliance of Motion Picture and Television Producers (AMPTP)
Association of Independent Video and Filmmakers, Inc.
Caucus for Producers, Writers & Directors
Reel Black Women
Retail Marketing & Advertising Association/RAC
Women In Film

BUSINESS AND LABOR ORGANIZATIONS

American Federation of State, County and Municipal Employees
Directors Guild of America
International Alliance of Theatrical Stage Employees and
Moving Picture Machine Operators
International Union of United Auto, Aerospace, and
Agriculture Implement Workers of America

INDEPENDENT STATIONS

KDOC-TV, Glendale, California (Calvin Brack)
KFTY-TV, Santa Rosa, California (James D. Johnson)
KGMC-TV, Oklahoma City, Oklahoma (Ted Baze)
KMOH-TV, Kingman, Arizona (Pete Eide)
KOFY-TV, San Francisco, California (James Gabbert)
KRBK-TV, Sacramento, California (Elliott Troshinsky)
KSCH-TV, Sacramento-Stockton, California (Harry Delaney)
KTXA-TV, Arlington, Texas (Dirk Brinkerhoff)
KTXH-TV, Houston, Texas (Julio Bermudez)
KVOS-TV, Bellingham, Washington (David P. Reid)
WFLI-TV, Chattanooga, Tennessee (Ying Benms)
WFMZ-TV, Allentown, Pennsylvania (Richard C. Dean)
WHKY-TV, Hickory, North Carolina (Thomas Long)
WPWR-TV, Chicago, Illinois (Al DeVaney)
WSST-TV, Cordele, Georgia (William Goodson)
WXON-TV, Southfield, Michigan (Douglas Johnson)
Tribune Broadcasting (Shaun Sheehan):
 WPIX-TV, New York, New York
 KTLA-TV, Los Angeles, California
 WGN-TV, Chicago, Illinois
 KWGN-TV, Denver, Colorado

WGNO-TV, New Orleans, Louisiana

PUBLIC INTEREST/CONSUMER GROUPS

American Civil Liberties Union
Council of Churches of the City of New York
National Association for Better Broadcasting
National Coalition on Television Violence
People for the American Way
Texas Consumer Association

PRODUCERS AND EMERGING PRODUCERS

Gerald W. Abrams (Hearst Entertainment Productions, Inc.)
Anita Addison
Debbie Allen
Jennifer Alward (Morgan Hill Films)
Blue Andre (Blue Andre Productions)
Greg Antonacci
Loreen Arbus (Loreen Arbus Productions, Inc.)
Danny Arnold (Tetragram Ltd.)
Diane Asselin (Asselin Productions)
Jon Avnet (Avnet-Kerner Company)
Mark Bacino (Green/Epstein Productions)
Paul Baerwald (Elberon Films, Inc.)
Diane Baker (Artemis Productions)
Peter Baldwin (Group B Productions)
Joan Barnett (Grossbart-Barnett Productions)
Philip Barry (Philip Barry Productions)
Juanita Bartlett (Juanita Bartlett Productions)
William E. Bast (WEB Productions, Inc.)
Donald Bellisario (Bellisarius Productions)
Harve Bennett (Harve Bennett Productions)
Eric Bercovici (Eric Bercovici Productions)
Dick Berg (Stonehenge Productions, Inc.)
Ted Bergmann (Ted Bergmann Productions, Inc.)
Rick Berman
Deirdre Berthrong
William Bickley (Bickley/Warren Productions)
John D.F. Black (Domremy Filmmakers Co. Inc.)
Daniel H. Blatt (Daniel H. Productions)
William Blinn (Echo Cove Productions)
Paul Bogart (Tiber Productions, Inc.)
Robert L. Boyett (Miller-Boyett Productions)
Bill Brademan (Brademan Productions)
David H. Braun (David Braun Productions)
Zev Braun (Zev Braun Pictures, Inc.)
Howard Braunstein (Michael Jaffe Films)
Michael Braverman (Toots Productions, Inc.)
Jameson Brewer (Jambre Productions, Inc.)
Cary Brokaw (Avenue Pictures)

Stanley M. Brooks (Once Upon A Time Films)
Buena Vista Pictures Distribution, Inc.
Al Burton (Al Burton Productions)
Joe Byrne (Joe Byrne Productions, Inc.)
Stephen J. Cannell (Stephen J. Cannell Productions)
Rueben Cannon (Rueben Cannon & Associates)
Frank R. Cardea (Schenck/Cardea Productions)
Glenn Gordon Caron (Picturemaker Productions, Inc.)
Marcy Carsey (The Carsey-Werner Company)
Lynda Carter (Potomac Productions)
Thomas Carter (Justice Productions)
Gilbert Cates (Gilbert Cates Productions, Inc.)
Ernest Chambers (Ernest Chambers Productions)
Cynthia A. Cherbak (Cynthia Cherbak Productions, Inc.)
Cy Chermak (Francy Productions, Inc.)
Lionel Chetwynd (Lionel Chetwynd Productions)
Marvin Chomsky (Skylark Cine Inc.)
Dick Clark (Dick Clark Productions)
Eric Cohen (Halcyon Productions)
Harold D. Cohen (Halcyon Productions, Inc.)
Ronald M. Cohen (The Movie Company)
Richard Colla (Rico-Lion Ltd.)
Richard J. Collins (Matlock Productions, Inc.)
Henry Colman (Colman Entertainment, Inc.)
Columbia Pictures Entertainment, Inc.
Tony Converse (Papageno Productions)
James Conway
Hal Cooper (Cooper Coffee Company)
Jackie Cooper (Jackie Cooper Enterprises, Inc.)
Greg Coote (Village Roadshow Pictures)
Barbara Corday
Richard Correll (Miller-Boyett Productions)
John Cosgrove (Cosgrove/Meurer Productions, Inc.)
Pierre Cossette (Pierre Cossette Productions)
Alan Courtney (Alex-Courtney Productions)
Ron Cowen (Cowlip Productions)
Durrell Royce Crays (The Durrell Royce Crays Co., Inc.)
Carmen Culver (Carmen Culver Films)
Dan Curtis (Dan Curtis Productions, Inc.)
William D'Angelo (Grosso-Jacobson Productions)
Karen Danaher-Dorr (Karen Danaher-Dorr Productions)
Ann Daniel (Ann Daniel Productions)
Linda Day (Linday Productions)
Suzanne dePasse (DePasse Entertainment)
San Denoff (Sam Denoff Productions)
Richard DiLello (Dark Ink, Inc.)
Walter Doniger (Bettina Productions, Ltd.)
Bonny Dore (Bonny Dore Productions)
Dennis E. Doty (Cates/Doty Productions)
Stephen Downing (Stephen Downing Productions)
David W. Duclon (Lightkeeper Productions, Inc.)

George Eskstein (Hajeno Productions, Inc.)
Alan Eisenstock
Art Emr (Caemelot Cinema)
Diane English (Shukovsky/English Productions)
Allen Epstein (Green-Epstein Productions, Inc.)
Jonathan Estrin (List/Estrin Productions)
Gordon Farr (Twenty Paws Productions)
Phillip D. Fehrle
Norman F. Felton (Arena Associates)
Andrew Fenady (Fenady Associates, Inc.)
Fern Field (Brookfield Productions, Inc.)
Joel Fields (Joel Fields Productions)
Michael Filerman (Michael Filerman Productions)
Robert Finkel (Teram Productions)
William Finnegan (Finnegan Pinchuk Company)
Preston Fischer (Preston Stephen Fischer Co.)
Peter Frankovich (Hearst Entertainment)
Seth Freeman
Jeff Freilich (Magnum Television)
Ed Friendly
Charles W. Fries (Fries Entertainment)
Jim Fritzhand (Whooping Crane Productions, Inc.)
John Furia (The Furia Organization, Inc.)
Lillian Gallo (Gallo & Gallo, Inc.)
Lila Garrett (Lila Garrett Productions)
Ron Gilbert (Ron Gilbert Associates)
Roger Gimbel (Carolco/Gimbel Productions)
Anthony I. Ginnane (IFM Film Associates Pty. Ltd.)
Stuart Glickman (The Carsey-Werner Company)
Melissa Goddard (MG Entertainment)
Gary David Goldberg (UBU Productions)
Max Goldenson (MWG Productions)
Russell Goldsmith (Republic Pictures)
Jonathan M. Goodson (Mark Goodson Productions)
B. Donald Grant (Grant-Tribune Productions)
Gil Grant (G-2 Productions)
Walter Grauman (Grauman Productions, Inc.)
Jim Green (Green-Epstein Productions, Inc.)
Peter S. Greenberg
David Greene (David Green Productions, Inc.)
Robert Greenwald (Robert Greenwald Productions)
Marcy Gross (Gross/Weston Productions)
Jack Grossbart (Grossbart Barnett Productions)
Robert Guenette (Robert Guenette Productions, Inc.)
Helena Hacker (Republic Pictures)
Jack Haley Jr. (Jack Haley Jr. Productions, Inc.)
Ronny Hallin
Earl Hamner (Amanda Productions)
Dean Hargrove (Dean Hargrove Productions, Inc.)
Susan Harris (Witt-Thomas-Harris Productions)
Patrick Hasburgh (Patrick Hasburgh Productions)

Jeffrey Hayes
Paul Heller (Paul Heller Productions)
Brian Henson (Jim Henson Productions, Inc.)
Douglas Heyes (The Heyes Company)
Danielle Hill (Republic Pictures)
Leonard Hill (Hill-Fields Entertainment)
Tim John Russell Hill (Republic Pictures)
James Hirsch (Papazian-Hirsch Entertainment)
Anne Hopkins (Marian Rees Associates, Inc.)
Roy Huggins (Public Arts, Inc.)
Kevin Inch (Inch High Productions)
Gerald Isenberg (Hearst Entertainment Productions, Inc.)
David Jacobs (Roundelay Productions)
Michael Jacobs (Michael Jacobs Productions)
Bob Jaffe (Jaffe Productions, Inc.)
Michael Jaffe (Michael Jaffe Films, Ltd.)
Georgia Jeffries (Georgia Jeffries Productions)
Shelley R. Jensen (S.R.J. Entertainment, Inc.)
Bruce Johnson (Cowpoke Productions)
Chas. Floyd Johnson (Chas. Floyd Johnson Productions)
Ilene Kahn (Odessa Pictures)
Irma Kalish (Arim Prods.)
Fay Kanin
Merrill Karpf (Schaefer/Karpf Productions)
Harris L. Katleman (Shadow Hill Productions)
Raymond Katz (Raymond Katz Enterprises)
Leonard Katzman (Lorimar Television)
Linda L. Kent (Grossbart-Barnett Productions)
Diana Kerew (Diana Kerew Productions, Inc.)
Bob Keyes
Chip Keyes
Doug Keyes
Willette Klausner (Edgework Productions)
Philip K. Kleinbart (Philbart Productions, Inc.)
James Komack (Komack Company, Inc.)
John A. Kuri (Kuri Productions, Inc.)
Jo LaMond (Front Stoop, Inc.)
Perry Lafferty (PL Productions)
John Landgraf (Sarabande Productions)
Cleve Landsberg (Cleve Productions, Inc.)
Bruce Lansbury (Bruce Lansbury Productions, Ltd.)
Glen Larson (Glen Larson Productions)
Andrew Laskos (Dover Road Productions)
Nicholas D. LeRose (Pleasant Living Productions, Inc.)
Deborah Joy LeVine
Joanna Lee (Rosebud Productions)
Jerry Leider
Wayne Lemon
William A. Levin (Sama Productions)
David Levy (Wilshire Productions, Inc.)
Ronald Lightstone (Aaron Spelling Productions)

Daniel Lipman (Cowlip Productions)
Shelley List (List/Estrin Productions)
Robert Lovenheim (River City Productions)
Lawrence A. Lyttle (A Lyttle Production Co.)
Nancy Malone (Lilac Production)
Caryn Mandabach (The Carsey-Werner Company)
Michael Mann (Michael Mann Productions, Inc.)
David Manson (Sarabande Productions)
John Mantley (Mantley Productions, Inc.)
Ann Marcus (Elan Productions, Inc.)
Stan Margulies (Stan Margulies Company)
Rob Markell (Marden Productions, Inc.)
Robert Markowitz (Mustard Seed Pictures, Inc.)
Neal Marlens (The Black/Marlens Company)
Garry Marshall (Henderson Productions)
Meryl Marshall (Two Oceans Entertainment Group)
Richard Maynard (Richard Maynard Productions)
Carol Evan McKeand (McKeand Productions)
Nigel McKeand (McKeand Productions)
Chuck McLain (CM Two Productions)
Jerry McNeely (Jeremac Productions, Inc.)
Terry Meurer (Cosgrove/Meurer Productions)
Patricia K. Meyer (Patricia K. Meyer Productions)
MGM/UA Communications Co.
Edward K. Milkis (Edward K. Milkis Productions)
Lee Mill (Lee Miller Productions)
Thomas L. Miller (Miller-Boyett Productions)
Marvin Minoff (Farrell/Minoff Productions, Inc.)
Larry Mintz
Judith Paige Mitchell
Gloria Monty (Gloria Monty Productions)
Christopher Morgan (The Christopher Morgan Company)
Peter Morgan (MG Entertainment, Inc.)
Dann Moss (Dann Moss Productions, Inc.)
MTM Enterprises, Inc.
Gary Nardino
E. Jack Neuman (P.A. Productions)
New World Entertainment
Carroll Newman (Carroll Newman Productions)
Robert O'Connor (Osiris Films Corporation)
Bernie Orenstein (Turteltaub/Orenstein Productions)
Barry Oringer (Barry Oringer Productions, Inc.)
Linda Otto
Mark H. Ovitz (Mark H. Ovitz Productions)
Robert Papazian (Papazian-Hirsch Entertainment)
Paramount Pictures Corp.
Marty Pasetta (Pasetta Productions)
Daniel M. Petrie
Dorothea Petrie (Dorothea Petrie Productions)
Clyde Phillips (Blue Hill Avenue Productions)
Ethan J. Podell (Orbis Communications, Inc.)

Judith Polone (King Phoenix Entertainment, Inc.)
Michael Pressman
Hans Proppe (Shadowplay Films)
Tristine Rainer (Tristine Rainer Productions)
Gary A. Randall (Grand Productions)
John Rappaport (Leeway Productions, Inc.)
Carolyn Raskin (Company III Productions Ltd.)
Ted Raynor (Newland-Raynor Productions, Inc.)
Marian Rees (Marian Rees Associates, Inc.)
Richard Reisberg (Reeves Entertainment Group)
Gene Reynolds
Michael Rhodes
John Rich (John Rich Productions, Inc.)
Lee Rich (Lee Rich Productions)
Jeb Rosebrook (Falrose Productions, Inc.)
Jeffrey M. Rosenbaum (Jeffrey Rosenbaum Productions, Inc.)
Meta Rosenberg (Meta Rosenberg Productions)
Richard Rosenbloom (Richard Rosenbloom Productions)
Barney Rosenzweig (The Rosenzweig Company)
Freyda Rothstein (Freyda Rothstein Productions)
Aaron Ruben (Andomar Productions)
Stanley Rubin (TBA Productions)
Louis Rudolph (Louis Rudolph Films)
Herman Rush (Rush Entertainment Group)
Alan Sacks (Heritage Entertainment)
Stu Samuels (The Samuels Film Co.)
Joseph Sargent
Herman Saunders (Hollywood & Vine Productions, Inc.)
George W. Schenck (Schenck/Cardea Productions)
George Schlatter Productions
Barbara Schultz
Robert Sertner (Von Zerneck-Sertner Films)
Richard Shapiro (Richard & Esther Shapiro Entertainment, Inc.)
Ester Shapiro (Robert Shapiro Productions Television)
Jack Shea (Silk Productions)
Harry Sherman (Aligre Productions, Inc.)
Joel Shukovsky (Shukovsky/English Productions)
Fred Silverman (Fred Silverman Co.)
Al Simon
David A. Simons (TJE Productions)
Greg H. Sims (Arrowhead Ent., Inc.)
Robert Singer (December 3rd Productions, Inc.)
Hal Sitowitz (Myrt-Hal Productions)
Alan Sloan (Alan Sloan, Inc.)
Steven P. Smith
Andrew Solt (Andrew Solt Productions)
Frank South (South Productions)
Aaron Spelling (Spelling Television, Inc.)
Alan Spencer
Ed Spielman (Eastwind One Corp.)

Leonard Stern (Heyday Productions)
George Stevens Jr. (New Liberty Productions, Inc.)
Paul Stojanovich (Paul Stojanovich Productions)
Greg Strangis (Ten-Four Productions, Inc.)
Sam Strangis (Ten-Four Productions, Inc.)
Larry Strawther
Malcolm Stuart (Stuart Phoenix, Inc.)
Martin Tahse (Martin Tahse Productions)
Tony Thomas (Witt-Thomas-Harris Productions)
Larry Thompson (Larry Thompson Organization)
Grant Tinker (GTG Entertainment)
Emily Tracy
Turner Broadcasting System, Inc.
Saul Turteltaub (Turteltaub/Orenstein Productions)
Universal City Studios, Inc.
Renee Valente (Renee Valente Productions)
Edward Duke Vincent (Aaron Spelling Entertainment)
Frank Von Zerneck (Von Zerneck-Sertner Films)
Sandy Vuelta (Vuelta International, Inc.)
Warner Bros. Inc.
Michael Warren (Bickley-Warren Productions)
Barry Weitz (Barry Weitz Productions)
Ann Weston (Gross/Weston Productions)
Martha E. Wheelock (Ishtar Films)
Larry White (Larry White Productions)
Steve White (Steve White Productions)
Irv Wilson (Madison Street Productions)
Ethel Winant
Margot Winchester (Margot Winchester Productions)
Harry Winer (Light Works Magic, Inc.)
Henry Winkler (Henry Winkler Productions)
Paul Junger Witt (Witt-Thomas-Harris Productions)
David L. Wolper (David L. Wolper Productions)
Donald Wrye (WH Productions, Ltd.)
Bud Yorkin (Bud Yorkin Productions)
Bob Young
Randall S. Zisk

B

EXCERPTS FROM JOINT BRIEF OF PETITIONERS COALITION TO PRESERVE THE FINANCIAL INTEREST AND SYNDICATION RULE AND ARIZONA CONSUMERS COUNSEL, Schurz Communications, Inc. v. FCC, No. 91-2350, April 16, 1992.

a. The Program Acquisition Process

The new television season debuts in September of each year, but the process of selecting programs begins more than a year earlier.¹⁹ From July through early January, producers attempt to interest a network in a program concept or idea. A network typically examines 1,000 series concepts a year.²⁰

19 Not all new programs first air in September. Some programs replace programs that are cancelled mid-season, and thus begin to air in January or March. The sequence of events described here is the same, however.

20 Petition for Reconsideration of the Coalition to Preserve the Financial Interest and Syndication Rule, Appendix C, Attachment 1 to this brief ("Attachment 1") (J.A. Tab 77 at 2684). Attachment 1 is a copy of a timeline reprinted from the Coalition Petition for Reconsideration ("Coalition Pet. Recon.") that sets forth the typical chronology of the negotiation process for a 1991/92 fall series. No party contested the accuracy of this chronology. Although for mid-season replacements the process begins later, the same sequence of events applies. Although the networks disagree with the Coalition as to the significance of this timing, Recon. Order at 357-58 and n.63 (J.A. Tab 2 at 179-80), they do not contest the timing itself. See Joint Opposition of Capital Cities/ABC, CBS Inc. and National Broadcasting Company, Inc. to Petitions For Reconsideration, filed Aug. 7, 1991, at 5 ("Joint Opposition") (J.A. Tab 79 at 2702).

Each of the networks then typically orders 175-200 scripts. Id. At the time a network commissions a script, it requires the producer to agree to a one-year script freeze. Coalition Comments at 17-18 (J.A. Tab 19 at 974-75). This freeze prohibits the producer from taking -- or even threatening to take -- a project to a competing network if the producer and network are unable to agree on licensing terms. Id. From January until early March, each network typically selects approximately 30-40 of its scripts for which it wishes to order a pilot. Attachment 1 (J.A. Tab 77 at 2684). A pilot is a single episode of the show that permits the network to sample the program and decide whether it wishes to order a series.²¹

At the same time that a network negotiates the terms of the pilot (i.e., from January until early March), it requires that producers negotiate the license terms of the series itself, even though the network has not yet decided whether it will order and air the series or made any commitment to the producer to do so. Id. Indeed, the network negotiates series license terms for all 30-40 pilots, even though each network, on average, will order only 7-10 new

21 Pilots are typically the same length as the program (i.e., half-hour for comedies and one-hour for action or drama), but in some cases may be longer (e.g., TV movie length) and in other cases shorter (a "presentation").

series for its prime time schedule.²² Attachment 1 (J.A. Tab 77 at 2684).

It is not until May (after all pilots have been produced and reviewed) that the network decides which series it will order for its fall prime time schedule. Recon. Order at 357-58 and n.62 (J.A. Tab 2 at 179-80).²³ At the same time, the network announces when the programs will air on the schedule. Recon. Order at 357 (J.A. Tab 2 at 179). It is not until this point in May, therefore, that the network finally commits to license a series -- under the terms and conditions agreed to approximately three months earlier. Id. at 357-58 (J.A. Tab 2 at 179-80).

22 In the standard license agreement, a network obtains a long-term option from a producer, allowing the network unilaterally to renew a series for up to four successive seasons. The standard option agreement also allows the network to renew a series for a small increase in the license fee in each succeeding year. Coalition Comments at 18-19 (J.A. Tab 19 at 975-76). The networks are prohibited by consent decrees entered into in 1978 and 1980 from negotiating for option terms in excess of four years (four and one-half years for mid-season replacements). Order at 3111 n.52 (J.A. Tab 1 at 18). Since the networks agreed to these limits over a decade ago, each has always demanded the maximum length -- i.e., four or four and one-half years. Coalition Comments at 18-19 and n.46 (J.A. Tab 19 at 975-76).

23 See also Coalition Pet. Recon. at 16 (J.A. Tab 77 at 2667) and Attachment 1 hereto.

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c

EXCERPTED FROM "PETITION FOR RECONSIDERATION OF THE COALITION TO PRESERVE THE FINANCIAL INTEREST AND SYNDICATION RULE",
MM Docket No. 90-162, July 8, 1991.

B. The Commission's 30-Day "Safeguard" Is Inadequate Because It Will Expire At A Point When The Networks Are Still Able To Extract Back-End Rights From The Producer

Given these facts, the Commission properly concludes that *if* the networks are permitted to negotiate for back-end rights, they *must not* be permitted to extract them at less than fair value or as a condition of access to their prime time schedule. As the Commission cogently observes, any benefits that would accrue from relaxing the Rule "would be lost if relaxation enabled the networks to extract financial interests from program producers for less than a compensatory price or to condition access to their schedules on acquisition of such rights."³⁶ Such results would imperil the diversity of program sources that benefits American viewers.

³⁶ *Id.* at ¶37.

The separate negotiation requirement is designed to limit such abuses by separating the negotiation of the network license from any negotiation of back-end rights.³⁷ Unfortunately, however, the fluidity of the network program acquisition process will permit easy circumvention of the Commission's intent in adopting the 30-day delay.

The networks will likely argue that the 30-day period begins to run as early as possible. (In no case, however, should the Commission permit it to begin before the parties have a written understanding of the license terms.) Typically, the networks require producers to negotiate those terms concurrently with the pilot negotiation.³⁸ If this interpretation governs and the 30-day period begins that early, the 30-day delay will not prevent the very abuses it is designed to foreclose.

As the Commission itself recognizes, to be effective the separate negotiation for back-end rights must occur *after* the network has committed to air a series.

³⁷ The networks will undoubtedly attack the separate negotiation safeguard by arguing that the networks are treated differently than the major studios, which can negotiate with producers for back-end rights free of such a safeguard. This argument is meritless because it ignores the fundamental principle justifying the regulation of the networks in the first place. As the Commission recognizes in its Order, the networks "remain virtually the sole purchasers of prime time entertainment series capable of successful syndication." *Id.* at ¶41. And the networks remain the gatekeepers to the national prime time television audience. Thus, a major studio, just like the smallest producer, must go through the network gatekeeper to reach the prime time audience.

³⁸ Prior to adoption of FISR, however, the networks negotiated license fees (and back-end rights) as early as when pilot *scripts* were commissioned. Under no condition should the FCC allow the networks to accelerate the "execution" of the license terms (and hence the commencement of the 30-day period) to this early stage.

A network *that has not committed to license a program* could . . . condition its commitment on a producer's agreement to relinquish financial interests or distribution rights in the program for less than a compensatory price.³⁹

Unfortunately, the 30-day delay "safeguard" *will expire long before a network commits to license a series*. Until a network makes that commitment, it continues to hold unparalleled leverage to extract valuable back-end rights as the condition of access to the network's prime time lineup.⁴⁰ The Commission's "safeguard" will thus permit the networks to do precisely that which the Commission concluded would *disserve* the public interest -- negotiate for back-end rights *before* committing to license a series.

The inadequacy of the 30-day delay derives from the program acquisition process.⁴¹ The pilot negotiation stage for fall series normally occurs in January, February and early March. At this stage, each network also requires the producer of a pilot to negotiate concurrently the pricing and other license terms of the series to be based on that pilot.⁴² At this

³⁹ *Id.* at ¶50 (emphasis added).

⁴⁰ A network need not explicitly condition access to a producer's relinquishment of back-end rights because every producer would realize that the odds of getting on the prime time schedule would decrease dramatically if it retained such rights for itself or sold them to a third party. Consequently, it would be virtually impossible for a producer to prove that such conditioning had occurred. Moreover, it would be suicidal for a producer who hopes to sell another show to a network even to attempt to prove conditioning.

⁴¹ A timeline setting forth the typical chronology of the negotiation process for fall series is attached at Appendix C. And as a specific example, timeline and supporting documentation for the recent commitment by ABC to license the series "Homefront" for its fall 1991 schedule is attached at Appendix D.

⁴² The networks always require producers to negotiate the series license terms for four years, the maximum permitted under the consent decrees.

point, however, the network has committed only to help finance the *pilot*. *The network has not yet committed to license or air the series.*⁴³

It is not until *late May* that the networks select which series they will air in the fall season. Shortly thereafter, the networks commit in writing to license and order the series.⁴⁴ Given the three to four month gap between negotiation of the pilot/series license agreement and the network's scheduling announcement for a series, the 30-day period will have long since expired.

Moreover, if a network is allowed to negotiate for back-end rights prior to committing to license and order a series, the Commission will also not fulfill its stated goal of "introduc[ing] new competition into bidding for" these rights.⁴⁵ As a practical matter, until a network has committed to license and order a series, the network is the *only* buyer of back-end rights. It is unlikely that any rational third party will buy an interest when the very act of buying that interest could devalue the program by reducing its

⁴³ The network only commits to license those series that make it onto its prime time schedule. The networks order many more pilots than will later become series. Of the 30-40 pilots each network orders each year, only 7-10 series commitments are made.

⁴⁴ In what has been referred to as "the annual spring rite" (Robins, *Fall Skeds Trade Class for Mass*, Daily Variety, May 27, 1991, at 1), the networks announce in New York each year which of the 125-odd pilots will make it onto their schedules and, at the same time, announce their prime time lineups. The program producers, who flock to New York in a last hope of convincing the networks to pick up their shows, may get a call the day before the public announcement of the schedule informing them that the network has picked up their series. But the network does *not commit* to license the show until the day it publicly announces its schedule or the day after, when it sends a written confirmation of such commitment.

⁴⁵ Order at ¶33.

chances of being scheduled. All things being equal,⁴⁶ a network will prefer those shows in which it acquires back-end rights when it makes its decisions as to which shows to air and when to schedule them.⁴⁷

Thus, while the concept of a separate negotiation is fundamentally sound and, indeed, *essential* to protect diversity if FISR is relaxed, the proposed 30-day delay "safeguard" is unfortunately the "toothless watchdog" that Commissioner Marshall fears.⁴⁸ It will not achieve its commendatory purpose of protecting producers from network extraction as a condition of access.⁴⁹ Consequently, it will afford little, if any, protection against the very real abuses reflected in the Commission's factual findings and is "insufficient to preserve the very diversity the Commission is pledged to promote."⁵⁰

⁴⁶ The Commission has recognized that "it is virtually impossible to tell at the outset whether a proposed program will be one of a season's small handful of hits." *Id.* at ¶46.

⁴⁷ *Id.* at ¶35. Jeffrey Sagansky, president of the CBS Entertainment Division, conceded as much when he told the Commission that if his network were permitted a financial interest in only some shows, CBS "would have to plan [its] development, business and scheduling decisions . . . with at least one eye on CBS's ownership of financial interests in its programs, not merely on the best overall program schedule [it] can muster." Further Comments of CBS, Inc. filed Nov. 21, 1990, App. D at 2-3 (Affidavit of Jeffrey Sagansky).

⁴⁸ Statement of Commissioner Sherrie P. Marshall at 4 (issued with Order).

⁴⁹ As Commissioner Marshall observed, "without some safeguard the networks will extract financial interest and syndication rights at less than market value as a condition of access to the network schedule. That access does not occur at the time of licensing, or even thirty days thereafter. It occurs at the time of ordering and scheduling of the program in question." *Id.*

⁵⁰ *Id.*

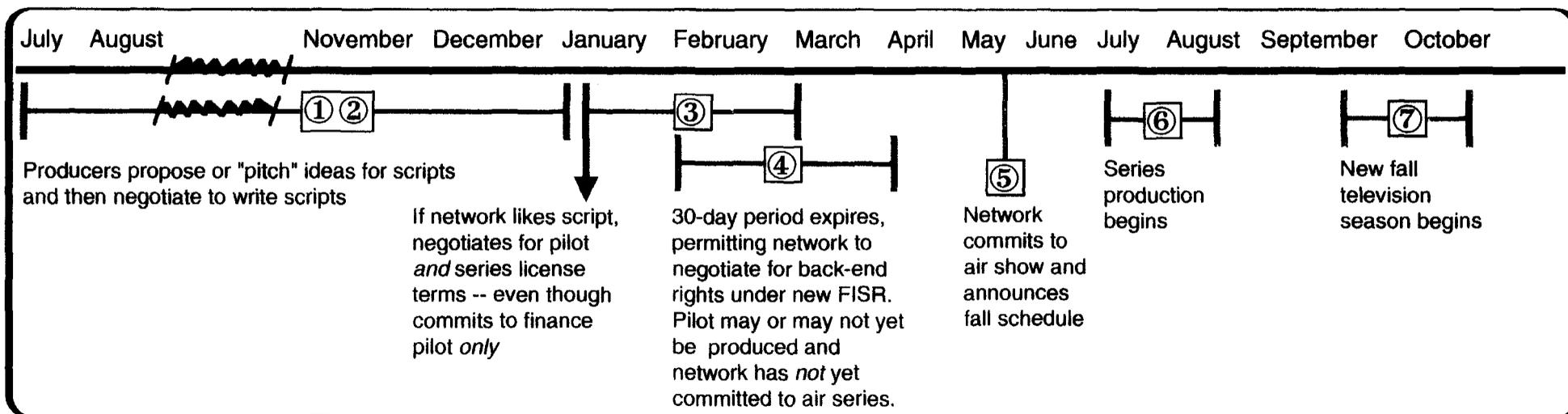
C. The Commission Should Modify Its Separate Negotiation Safeguard To Make It Effective By Requiring That Any Negotiations For Back-End Rights Occur Only After The Network Commits To License A Series

The Commission can ensure that the secondary negotiation safeguard provides some real protection simply by mandating that negotiations for back-end rights occur only *after* a network has committed to license a series.⁵¹ As explained above, this commitment is not made in writing until shortly after the network announces its schedule. So that the secondary negotiation cannot be subject to manipulation, however, the Coalition proposes that the Commission delay the secondary negotiation until after the network has announced its schedule and advised the producer of the series' time-slot. The date the network announces its schedule provides a degree of certainty that no other benchmark would provide. Moreover, it is not until a program is scheduled -- when both parties have more comparable knowledge of the program's prospects⁵² -- that any sort of bargaining (as opposed to mere extraction) is possible.

⁵¹ This legitimate separate negotiation safeguard was first proposed to the Commission by the Department of Commerce's National Telecommunications and Information Administration -- an impartial third party and the Executive Branch communications expert. See Reply Comments of the National Telecommunications and Information Administration filed Aug. 1, 1990, at 31-32.

⁵² For example, both parties know what competing programs are on the other networks and what the lead-in and lead-out programs will be. In addition, the parties also know from the pilot and subsequent events (staffing, recasting, etc.) how actual costs for the first year are likely to compare to budgeted costs. See Coalition Further Comments at 12 n.32.

APPENDIX C
TYPICAL TIMELINE FOR FALL TELEVISION SERIES

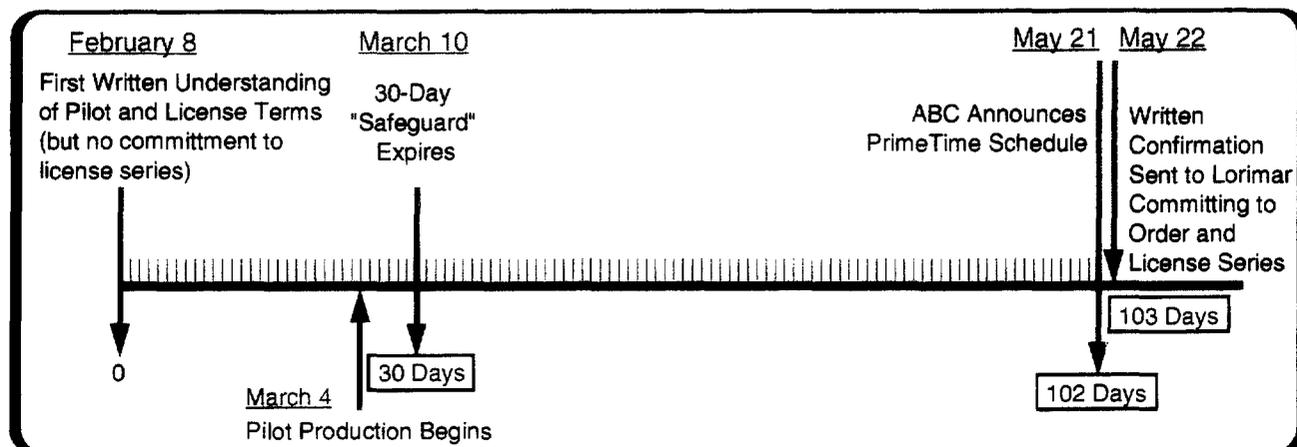


- ① **July - early January -- Creative Idea**
 Producer proposes or "pitches" ideas to network. CBS states it examines 1,000 series concepts each year.
- ② **July - early January -- Negotiations for Script**
 If network likes idea, it commissions a pilot script. Each network examines 175-200 pilot scripts each year.
- ③ **January - early March -- Negotiations for Pilot & License Agreement**
 If network likes script, it negotiates to have a pilot produced. Although network commits to finance only the pilot, it requires producer to negotiate concurrently both the terms of the pilot *and* the license fees and terms for four years of series *in the event* network later decides to air the series. (If network purchased script and network and producer cannot then reach an agreement on the terms, network imposes one-year "script freeze" on project, effectively killing the show). Each network typically orders 30-40 pilots.
- ④ **February- early April -- "Secondary Negotiation" for Back-End Rights**
 Under the Commission's new rules, network can negotiate for financial interest and syndication (or "rerun") rights 30 days after completing the negotiations outlined in step ③. As can be seen, this 30-day period will expire *before* the network commits to air series. Until a network makes that commitment, it holds unparalleled leverage to extract valuable back-end rights as the condition of access to the network's prime time lineup. Indeed, at the time the 30-day period expires, the pilot may not yet have been produced or aired.
- ⑤ **Late May -- Network Announces Fall Schedule**
 Of the 30-40 pilots, each network will typically commit to air 7-10 new series that will be included in their fall schedules, announced in May. (The license terms for the series were negotiated several months earlier at pilot stage (*see* step ③ above) -- before the networks committed to air the series.)
- ⑥ **July - August -- Series Production Begins**
- ⑦ **Late September - October -- New Fall Television Season Begins**

APPENDIX D

ABC/Lorimar Negotiation for Production of "Homefront"

Fall 1991 Schedule



- ① February 8: First Written Confirmation of Understanding of Pilot and License Terms -- ABC agrees to finance the pilot and to the license terms for series, but *makes no commitment* to license the series. See letter from Lorimar to ABC at Tab 1.
- ② March 4: Pilot production begins.
- ③ March 10: 30-Day "Safeguard" Expires -- ABC would now be able to negotiate for rights with the producer who -- even in the midst of pilot production -- has no assurance the program will be licensed. In fact, of the 125-odd pilots that have been ordered, only 7-10 will later make it onto each network's Fall schedule. See article at Tab 2.
- ④ May 20: ABC telephones Leslie Moonves at Lorimar to tell him "Homefront" is on the schedule.
- ⑤ May 21: ABC Publicly Announces Prime Time Schedule, which includes "Homefront". See press release at Tab 3.
- ⑥ May 22: ABC sends written confirmation to Julie Waxman at Lorimar committing to order and license series. See confirmation at Tab 4.

CERTIFICATE OF SERVICE

I, Bonnie G. Eissner, do hereby certify that true copies of the foregoing **COMMENTS OF THE COALITION TO PRESERVE THE FINANCIAL INTEREST AND SYNDICATION RULE** were mailed first class postage prepaid, unless otherwise indicated below, to the following individuals on this 30th day of May, 1995:

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